

AMENDED IN ASSEMBLY APRIL 14, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 34

Introduced by Assembly Member Williams

December 6, 2010

~~An act to amend Section 42231 of the Public Resources Code, relating~~
An act to add Article 1.3 (commencing with Section 43223) to Chapter
2 of Part 4 of Division 30 of the Public Resources Code, relating to
solid waste.

LEGISLATIVE COUNSEL'S DIGEST

AB 34, as amended, Williams. ~~Solid waste: compost market program.~~
waste compost facilities: odor.

Existing

(1) *Existing* law, the California Integrated Waste Management Act of 1989, ~~establishes a compost market program to increase the use of compost products, including requiring the Department of General Services and Department of Resources Recycling and Recovery to maintain specifications for the purchase of compost by the state and requiring the Department of Transportation to use compost in place of, or to supplement, petroleum-based commercial fertilizers in the state's highway landscape maintenance program. The term compost is defined, for purposes of this program, as the product resulting from the controlled biological decomposition of organic wastes that are source-separated from the municipal solid waste stream~~ *requires the Department of Resources Recycling and Recovery to adopt regulations governing the operation of organic composting sites, including odor management and threshold levels. The act prohibits the operation of a solid waste facility,*

as defined, without a solid waste facilities permit issued by the enforcement agency having jurisdiction over the facility.

This bill would specify that these organic wastes include, but are not limited to, vegetable, yard, and wood wastes that are not hazardous waste define terms and require the department to develop, by July 1, 2012, a guidance document to assist enforcement agencies in the adoption of site-specific objective odor performance thresholds for compost facilities. The bill would authorize a compost facility operator to apply to an enforcement agency to adopt performance thresholds, pursuant to a specified procedure, including the payment of an application fee, and would require the enforcement agency to take specified actions with regard to that application, thereby imposing a state-mandated local program.

The bill would prohibit an enforcement agency from verifying that an odor complaint originates from a compost facility for which the enforcement agency has adopted performance standards, unless the odor violates certain performance threshold standards. The bill would also require a compost facility operator who submits an application to an enforcement agency to adopt performance standards to also submit to the department an annual odor regulation fee according to a fee schedule that the department would be required to establish. The bill would require the fees to be deposited in the Integrated Waste Management Account, for expenditure by the department, upon appropriation by the Legislature.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

*Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~no~~-yes.*

The people of the State of California do enact as follows:

- 1 *SECTION 1. Article 1.3 (commencing with Section 43223) is*
- 2 *added to Chapter 2 of Part 4 of Division 30 of the Public Resources*
- 3 *Code, to read:*

1 Article 1.3. *Compost Facility Odor Performance Thresholds*

2
3 43223. *The Legislature finds and declares all of the following:*

4 (a) *The people of the state have a primary interest in diverting*
5 *compostable materials from the solid waste stream that would*
6 *otherwise be destined for landfills and into compost facilities.*

7 (b) *Pursuit of this primary interest is being impeded by the*
8 *existence and inconsistent enforcement of subjective and*
9 *inconsistent odor standards set by, or enforced under, local,*
10 *regional, or state legal authority, including, but not limited to,*
11 *ordinances, statutes, regulations, rules, guidance documents,*
12 *permits, orders, or common law, that relates to nuisance, air*
13 *quality, solid waste, or composting.*

14 (c) *The health, safety, and welfare of the people of the state will*
15 *be promoted by making available to compost facility operators, a*
16 *process for obtaining performance thresholds for odor control at*
17 *those compost facilities.*

18 (d) *The department should issue a guidance document to assist*
19 *enforcement agencies in setting performance thresholds.*

20 43224. *For purposes of this article, the following definitions*
21 *shall apply:*

22 (a) *“Compost facility” means a compostable materials handling*
23 *operation or facility that is required to have a solid waste facilities*
24 *permit pursuant to this division.*

25 (b) *“Fenceline performance threshold” means a numerical*
26 *dilution-to-threshold ratio, measured at the fenceline of the*
27 *compost facility, which corresponds to the odor performance*
28 *threshold.*

29 (c) *“Performance threshold exceedance standard” means an*
30 *odor measurement that exceeds a performance threshold.*

31 (d) *“Receptor performance threshold” means a numerical*
32 *dilution-to-threshold ratio, measured at the residence of a person*
33 *making an odor complaint regarding a compost facility, which*
34 *corresponds to the odor performance threshold.*

35 (e) *“Site-specific objective odor performance threshold” or*
36 *“performance threshold” means a site-specific objective odor*
37 *performance threshold for a compost facility.*

38 43225. *On or before July 1, 2012, the department shall develop,*
39 *in consultation with stakeholders, a guidance document to assist*
40 *enforcement agencies in the adoption of fenceline performance*

1 *thresholds, receptor performance thresholds, and performance*
2 *threshold exceedance standards for compost facilities. The*
3 *guidance document shall provide for all of the following:*

4 *(a) Each performance threshold shall be a numerical*
5 *dilution-to-threshold ratio measured with a field olfactometer or*
6 *similar device.*

7 *(b) The fenceline performance threshold shall be the numerical*
8 *dilution-to-threshold ratio, measured at the fenceline of the*
9 *compost facility, which corresponds to the odor performance*
10 *threshold.*

11 *(c) The receptor performance threshold shall be the numerical*
12 *dilution-to-threshold ratio measured at the residence of a person*
13 *making an odor complaint regarding the compost facility, which*
14 *corresponds to the odor performance threshold.*

15 *(d) The guidance document shall require enforcement agencies,*
16 *when developing standards to be used in determining a*
17 *performance threshold exceedance, to ensure that odor*
18 *measurements are verifiable and repeatable and that the odor at*
19 *a residence is the same odor as the odor originating at the compost*
20 *facility.*

21 *(e) The guidance document shall set standards limiting the*
22 *maximum number of performance threshold exceedance standards*
23 *that can occur in a 24-hour period.*

24 *43226. (a) A compost facility operator may apply to an*
25 *enforcement agency to adopt fenceline performance thresholds,*
26 *receptor performance thresholds, and performance threshold*
27 *exceedance standards for that compost facility.*

28 *(b) The compost facility operator's application for performance*
29 *thresholds shall include proposed performance thresholds for the*
30 *facility and an explanation of why those performance thresholds*
31 *would be appropriate in light of the relevant circumstances.*

32 *(c) (1) Except as provided in paragraph (2), the application*
33 *shall be accompanied by a filing fee according to a fee schedule*
34 *established by the enforcement agency to reflect the costs of*
35 *processing the application.*

36 *(2) If the enforcement agency has not established a fee for a*
37 *performance thresholds application as of the date that an*
38 *application is filed, the operator is not required to submit a fee to*
39 *the enforcement agency.*

1 (d) Within 60 days after the date of receipt of a performance
2 thresholds application, the enforcement agency shall provide the
3 facility operator with draft performance thresholds for the facility.
4 If the draft performance thresholds are different from the
5 performance thresholds proposed in the application, the
6 enforcement agency shall include an explanation of the differences.

7 (e) Within 30 days after the date of receipt of the enforcement
8 agency's draft performance thresholds and accompanying
9 explanation, the compost facility operator may submit a response
10 to the enforcement agency.

11 (f) Within 120 days of receipt of a performance threshold
12 application, the enforcement agency shall provide the facility
13 operator and department with final performance thresholds for
14 the facility and an explanation of why the performance thresholds
15 are appropriate in light of the relevant circumstances. The
16 explanation shall include all elements required in connection with
17 the draft performance threshold.

18 (g) The department may reject the final performance thresholds
19 within 30 days of completion. If the department rejects the final
20 performance thresholds pursuant to subdivision (f), the department
21 shall explain the reasons for rejection and offer suggestions for
22 remedying the department's concerns.

23 (h) The final performance thresholds shall be deemed accepted
24 by the department if no action is taken by the department within
25 30 days of receipt of the final performance thresholds.

26 (i) Within 30 days after the enforcement agency provides the
27 facility operator and the department with final performance
28 standards pursuant to subdivision (f) and the department fails to
29 take action pursuant to subdivision (h), or within 30 days after the
30 department rejects the final performance thresholds pursuant to
31 subdivision (g), the compost facility operator may appeal the final
32 performance thresholds to the department, which shall conduct a
33 *de novo* review of the performance thresholds.

34 (2) The evidence before the department shall consist of the
35 record before the enforcement agency and any other relevant
36 evidence that, in the judgment of the department, should be
37 considered to effectuate and implement the policies of this division.

38 (3) The department shall make a finding that the enforcement
39 agency's final performance thresholds were one of the following:

40 (A) Appropriate and proper.

1 (B) *Inappropriate.*

2 (C) *Improper.*

3 (4) *Upon finding that the enforcement agency's final*
4 *performance threshold were inappropriate or improper, the*
5 *department shall issue final performance thresholds that are*
6 *appropriate and proper, together with an explanation including*
7 *all elements required in connection with the enforcement agency's*
8 *draft performance threshold.*

9 (5) *Within 30 days after receipt of department's decision*
10 *pursuant to paragraph (32), the compost facility operator may file*
11 *with the superior court a petition for writ of mandate for review*
12 *of the decision under Section 1094.5 of the Code of Civil*
13 *Procedure, and the court shall exercise its independent judgment*
14 *on the evidence pursuant to subdivision (c) of Section 1094.5 of*
15 *the Code of Civil Procedure.*

16 43227. *An enforcement agency shall not verify an odor*
17 *complaint originating from a compost facility, for which the*
18 *enforcement agency has adopted performance thresholds pursuant*
19 *to Section 43226, unless the odor violates performance threshold*
20 *exceedance standards.*

21 43228. *A compost facility operator who elects to submit an*
22 *application to an enforcement agency to adopt performance*
23 *standards pursuant to this article shall also submit to department*
24 *an annual odor regulation fee according to a fee schedule*
25 *established by department. The department shall set the fee*
26 *schedule pursuant to this section based on the reasonable*
27 *regulatory costs to the department incident to implementing this*
28 *section and shall deposit the fees in the Integrated Waste*
29 *Management Account, for expenditure by the department, upon*
30 *appropriation by the Legislature to implement this section.*

31 SEC. 2. *No reimbursement is required by this act pursuant to*
32 *Section 6 of Article XIII B of the California Constitution because*
33 *a local agency or school district has the authority to levy service*
34 *charges, fees, or assessments sufficient to pay for the program or*
35 *level of service mandated by this act, within the meaning of Section*
36 *17556 of the Government Code.*

37 ~~SECTION. 1. The Legislature finds and declares all of the~~
38 ~~following:~~

1 ~~(a) The Department of Resources Recycling and Recovery~~
2 ~~estimates that 32 percent of the solid waste sent to landfills every~~
3 ~~year is compostable organic material.~~

4 ~~(b) The department is committed to reducing, by the year 2020,~~
5 ~~the amount of organic material in the solid waste stream to 50~~
6 ~~percent of the amount that is currently sent to landfills.~~

7 ~~(c) In order to meet that goal, the department has identified the~~
8 ~~need for diverting waste from landfills at a rate of 15 to 18 million~~
9 ~~tons per year and increasing compost production and markets.~~

10 ~~(d) According to the department, to achieve a reduction in the~~
11 ~~organic waste stream of 50 percent by 2020, the state would need~~
12 ~~to increase the capacity to process organic waste materials by as~~
13 ~~many as 96 new facilities, resulting in the creation of hundreds of~~
14 ~~green jobs.~~

15 ~~(e) Diverting organic materials from landfills results in~~
16 ~~substantial environmental benefits, including the reduction of~~
17 ~~methane and other volatile organic compounds.~~

18 ~~(f) Further, compost, as an end product, can provide significant~~
19 ~~agricultural benefits, such as erosion control and water~~
20 ~~conservation.~~

21 ~~(g) Recognizing these benefits, the state should work to increase~~
22 ~~the diversion of organic materials from landfills by increasing~~
23 ~~processing capacity and end-use markets.~~

24 ~~SEC. 2. Section 42231 of the Public Resources Code is~~
25 ~~amended to read:~~

26 ~~42231. "Compost" means the product resulting from the~~
27 ~~controlled biological decomposition of organic wastes, including,~~
28 ~~but not limited to, vegetable, yard, and wood wastes that are not~~
29 ~~hazardous waste, and that are source separated from the municipal~~
30 ~~solid waste stream.~~